

## PART III

### PROCEDURAL ISSUES

#### H. COMMENCEMENT OF BENEFITS

##### 3. SURVIVORS' CLAIMS

When a miner's surviving spouse has demonstrated entitlement to benefits by establishing that the miner's death was due to pneumoconiosis, benefits commence with the month of the miner's death or January 1, 1974, whichever is later. 20 C.F.R. §§725.503(c), 727.302(c)(2); **Ives v. Jeddo Highlands Coal Co.**, 9 BLR 1-167 (1986); **Mihalek v. Director, OWCP**, 9 BLR 1-157 (1986)[Section 725.503(b) does not apply when the miner was not totally disabled during his lifetime]; **Vanover v. Director, OWCP**, 6 BLR 1-920 (1984)[where the surviving spouse established entitlement pursuant to 20 C.F.R. §727.203(a)(5) and the miner died in 1969, benefits commence as of January 1, 1974 as a matter of law]; **Simila v. Bethlehem Mines Corp.**, 7 BLR 1-535 (1984), *vacated in part on other grounds sub nom.*, **Bethlehem Mines Corp. v. Director, OWCP**, 766 F.2d 128, 8 BLR 2-4 (3d Cir. 1985)[no survivor's benefits until the month of the miner's death].

If the miner was totally disabled by pneumoconiosis arising out of his coal mine employment prior to his death, then benefits are payable to claimant based on the miner's claim for lifetime benefits from the onset date until the month before the miner's death. **Combs v. Director, OWCP**, 8 BLR 1-88 (1985).

#### CASE LISTINGS

[where surviving spouse established entitlement at Section 727.203 (a)(5) and miner died 1969, benefits commence January 1, 1974 as matter of law] **Vanover v. Director, OWCP**, 6 BLR 1-920 (1984).

[no survivor's benefits until the month of the miner's death] **Simila v. Bethlehem Mines Corp.**, 7 BLR 1-535 (1984), *vacated in part on other grounds sub nom.*, **Bethlehem Mines Corp. v. Director, OWCP**, 766 F.2d 128, 8 BLR 2-4 (3d Cir. 1985)

[if miner totally disabled by pneumoconiosis arising out of coal mine employment prior to death, benefits payable to survivor based on miner's claim for lifetime benefits from onset date until month before miner's death] **Combs v. Director, OWCP**, 8 BLR 1-88 (1985).

## **DIGESTS**

Section 725.503(b) does not apply when the miner was not totally disabled during his lifetime. ***Mihalek v. Director, OWCP***, 9 BLR 1-157 (1986).

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